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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 566

JAMES S. MORISON,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
a Delaware corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioner, JAMES S. MORISON, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on June 11, 1970.

OPINION BELOW

The opinion of the court below (Appendix A) is not yet reported.

JURISDICTION.

The judgment of the United States Court of Appeals for the Fifth Circuit was rendered on June 11, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Does an "all person, firms or corporations" release bar an action against a joint tort-feasor who paid no consideration for and was not named in the release, under Arkansas law?

STATUTES INVOLVED

The statutes involved are Sections 34.1001 to 34.1009 of the Laws of Arkansas, 1947. These statutes are set forth in Appendix B.

STATEMENT OF THE CASE

Plaintiff, a citizen of Florida, sued General Motors, a Delaware corporation, in the United States District Court for the Southern District of Florida, alleging that he suffered numerous injuries, including the loss of sight in both eyes, brain damage, multiple skull fractures and traumatic epilepsy, as the result of an automobile accident in Arkansas wherein he was a passenger in a 1966 Chevrolet. It was alleged that his injuries were the result of the "padded" dashboard in the Chevrolet having been designed by the Defendant in such a manner as to contain a metal blade-like projection which was located so that a right front seat passenger would strike it with his head when the automobile was involved in a front-end collision. Jurisdiction was based on diversity of citizenship.

Defendant's answer raised as an affirmative defense a release executed by the Plaintiff naming the driver of the automobile in which he was a passenger.

The District Court granted a summary judgment, which the United States Court of Appeals for the Fifth Circuit affirmed, holding that the release by the Plaintiff of the driver of his automobile also released General Motors, which was not named in the release.

The relevant portions of the release are set forth on page A2 of the opinion of the Court of Appeals (Appendix A). The release specifically referred to the driver of the automobile by name and also purported to release "their heirs, executors and administrators, agents and assigns and all other persons, firms and corporations liable or who might be claimed to be liable * * * for any and all claims * * *".

The opinion of the Court of Appeals indicates on page A3 that all parties were agreed that the effect of the release was to be governed by the law of Arkansas which has adopted the Uniform Contribution Among Tort-Feasors Act (Appendix B).

In this case the Court of Appeals discussed an opinion of the United States Court of Appeals for the Sixth Circuit, *Allbright Bros. Contractors v. Hill-Dobbs Co.*, 209 F.2d 103 (6th Cir. 1953), which held that under the law of the State of Arkansas, only those persons *named* in a release would be released.

The Court of Appeals refused to apply the holding of the *Allbright* case and instead elected to apply the law of states other than Arkansas in construing this release.

REASONS FOR GRANTING THE WRIT

No. 1

THE DECISION OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT IS IN DIRECT CONFLICT WITH THE HOLDING OF *ALLBRIGHT BROS. CONTRACTORS V. HULL-DOBBS CO.*, 209 F.2d 103 (6th Cir. 1953).

No. 2

THE FIFTH CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT STATE QUESTION IN SUCH A WAY AS TO CONFLICT WITH THE APPLICABLE LAW OF THE STATE OF ARKANSAS.

In *Allbright Bros. Contractors v. Hull-Dobbs Co.*, 209 F.2d 103 (6th Cir. 1953), a settlement was made in Arkansas by one joint tort-feasor and the settlement provided that the payments made were in full and complete settlement "* * * of any and all claims, actions, or causes of actions, or causes of action accruing to the plaintiffs, and arising out of the accident complained of."

It was urged in the *Allbright* case that since the settlement was in full and complete settlement of any and all claims and damages of every kind and description arising out of the accident, the settlement extinguished the liability of the other joint tort-feasor. The Sixth Circuit Court of Appeals, held, however, that the settlement did not purport to be for the benefit of the other joint tort-feasor and did not release the other joint tort-feasor from liability. After setting forth the Arkansas joint tort-feasor statute, the very same portions of which are relied on by the Defendant in the present case, the court stated on page 104:

> "The release of appellant by the injured parties did not, under the foregoing statutory provisions, discharge appellees, since it did not therein provide for their release. They were not *named* in the release and settlement agreements or in the judgments entered thereon; and a release of one joint tort-feasor does not discharge another tort-feasor not named therein." (Emphasis added)

The holding of the Sixth Circuit Court of Appeals in the *Allbright* case, applying Arkansas law, and particularly the above-quoted language, has been approved and reaffirmed by the Arkansas Supreme Court in *Smith* v. *Tipps Engineering & Supply Company*, 333 S.W.2d 483 (Ark. 1960).

The holding in the present case that a joint tort-feasor does not have to be specifically named in a release in order for the joint tort-feasor to be released, is in direct conflict with the holding of the *Allbright* case, and also constitutes a patent refusal to apply the law of Arkansas as set forth in the *Allbright* case and as affirmed by the Arkansas Supreme Court in *Smith* v. *Tipps Engineering & Supply Company*, 333 S.W.2d 483 (Ark. 1960).

CONCLUSION

Because of the conflict of the decision below with the decision of another circuit court of appeals and the conflict with applicable state law on this important question, this petition for writ of certiorari should be granted.

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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 28625

JAMES S. MORISON,
Plaintiff-Appellant,

versus

GENERAL MOTORS CORPORATION, A Delaware Corp.,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida

(June 11, 1970)

Before TUTTLE, and CLARK, Circuit Judges, and EDENFIELD, District Judge.

TUTTLE, Circuit Judge: This is an appeal from a summary judgment for the Defendant, General Motors, based on a release given by the Plaintiff-Appellant to a joint tort feasor following an automobile accident in which Morison suffered serious physical injuries.

The original claim by Morison was against Wilma C. Roach, who was the owner and driver of the automobile in which he was a passenger at the time of the collision of the automobile with the abutment of a bridge in Arkansas. Thereafter, State Farm Insurance Company, the public liability insuror for Wilma Roach, negotiated a settle-

ment for damages with Morison and his attorney. The sum of $10,000 was paid to Morison, who then signed a release which specifically named Wilma Roach and Acel Clark, a witness, "their heirs, executors and administrators, agents and assigns and *all other persons, firms or corporations liable or who might be claimed to be liable* . . . for any and all claims, demands, damages, actions, courses of action, or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred," etc.[1] (Emphasis added.)

Some time later the injured passenger, Morison, filed suit in Florida against General Motors, his complaint alleging five counts of liability: I. Negligence; II Strict Liability in Tort; III Breach of Express and Implied Warranties; IV Wanton and Wilful Misconduct and V Fraud and Misrepresentation. As to the first four counts he expressly alleged that the "collision was the proximate result of Defendant's negligence; . . . 'either solely or concurrently with the negligence of the driver' and that "his injuries were proximately caused by the sole negligence, carelessness, recklessness, wilfulness and or wantoness of Defendant [GM], as hereinafter more specifically described, or in the alternative, Defendant's negligence concurred with that of the driver . . . to proximately cause the Plaintiff's injuries."

[1] The release also contained the following:

"Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed and otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident."

The appellant does not seriously contend that this suit was not against a "joint tort feasor." He poses this question in his brief: "Does an 'All Persons, Firms or Corporations' Release Bar an Action Against a Joint Tort-Feasor Who Paid No Consideration for and Was Not Named in the Release?" Although the brief makes the bald statement that "There was also an issue of fact as to whether General Motors was the sole tort-feasor," Appellant clearly overlooks the following definition in the Uniform Joint Tort Feasors Act:

> "* * * two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them."

In response to a motion for summary judgment filed by Defendant, plaintiff and his "settling" counsel both filed affidavits asserting that they did not intend to release General Motors and that they did not negotiate any settlement with General Motors, and that General Motors paid no consideration for this release.

Both parties argue that the case is to be decided by Arkansas law. At the time of the injury and the release, Arkansas had adopted the Uniform Contribution Among Tort Feasors Act. The principal paragraph of this Act relied upon by Defendant provides as follows:

> "34-1004: Release of one tortfeasor—Effect on injured person's claim.—A release by the injured person of one joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release, if greater than

the consideration paid." Laws of Ark., 1947, Sec. 34-1004.

There are no Arkansas cases or Federal Court cases announcing Arkansas law construing the words, "unless the release so provides" which deal with a release of "all other persons, firms or corporations liable, etc." The nearest case to this one before us and the one claimed by the injured party to expound the Arkansas law released *only* the *named persons* and then stated that the settlement was ". . . "of any and all claims, actions, or causes of actions accruing to the Plaintiffs and arising out of the accident complained of." *Allbright Bros. Contrs. v. Hull-Dobbs Co.*, 6 Cir. (1953) 209 F.2d 103.

The only cases from other jurisdictions which contain the language releasing any and all persons in addition to the named parties hold that such language satisfies the requirement of the Act "unless the release so provides." They hold that "all" means "all" without requiring the insertion of the names of any and all other persons. See *Hodges v. United States Fidelity and Guaranty Company* (1952), Mun. Ct. D.C. 91 Atl. 2d 473; *Hasselrode v. Gnagey*, 401 Pa. 549, 172 Atl. 2d 764 (1961); *Pemrock, Inc. v. Essco Co., Inc.* (Md. 1969) 249 A.2d 711; *Peters v. Butler* (Md. 1969), 251 A.2d 600. We agree with this construction as announced in these cases.

At first blush the contention of the Plaintiff is an appealing one. Why should a release paid for by Wilma Roach and or her insuror benefit General Motors which not only paid nothing for the release, but probably, did not even know of it until long afterwards? However, the policy reasons that support the holdings of the courts which have construed the language to release all tort-

feasors are clear when we consider additional provisions of the Uniform Act.[2]

Thus, it is clear that Wilma Roach and or her insuror would lose substantial rights unless they obtained a complete release of *all* tortfeasors. They would give up their right to seek contribution from General Motors, for instance; and they would leave themselves open to an action for contribution to a judgment obtained by the Plaintiff against another tortfeasor. Thus, it may be assumed that the settlement would never have been made here unless the release of *all* joint tort feasors was included.

Of course, it appears highly unlikely that parties situated as were Wilma Roach (whose settlement was paid by her insuror) and General Motors, if otherwise liable, would really have much interest in preserving these rights of contribution over against each other. However, we are construing a statute which must have application

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2. "Section 2(3) and Section 5 of the Act (Laws of Ark., 1947, Sec. 34-1002(3) and Sec. 34-1005) are also important for present purposes. Section 2(3) provides:

> 34-1002. Right of Contribution—Accrual—Pro rata share—
>
> (1) the right of contribution exists among joint tortfeasors.
>
> . . . . . .
>
> (3) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

Section 5 provides:

> "34-1005. Effect of release on right of contribution.—A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors." Uniform Joint Tort Feasors Act, Sect. 34-1001 through 34-1009 Ark. Stats. Anno.

to all parties similarly situated—parties whose respective position and status might make the right of contribution a very valuable right.

Not only does the language of this particular release clause require the construction which we place upon it, but so, also, when the interdependent provisions of the law are construed, the logic supporting this construction is clear.

Moreover, an additional paragraph of the Arkansas statute is significant. It says:

> "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of these states that enact it." Acts 1941, No. 315 §9 p. 788. See 34-1008, Laws of Arkansas.

As we read the cases of the states where the Act has been construed by the courts we conclude that we have carried out the mandate of Sect. 1008 by holding that this release satisfied the terms of the Act that provided for a release of all joint tortfeasors.

The judgment is *AFFIRMED*.

APPENDIX B

Laws of the State of Arkansas

Sections 34.1001 to 34.1009

THE UNIFORM CONTRIBUTION AMONG TORT-FEASORS ACT

"34.1001. 'Joint tortfeasors' defined.—For the purpose of this act [§§34.1001-34.1009] the term 'joint tortfeasors' means two [2] or more persons jointly or severally liable in tort for the same injury to persons or property, whether or not judgment has been

recovered against all or some of them. [Acts 1941, No. 315, § 1, p. 788.]

34.1002. Right of contribution—Accrual—Pro rata share.—(1) The right of contribution exists among joint tortfeasors.

(2) A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

(3) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(4) When there is such a disproportion of fault among joint tortfeasors as to render inequitable and equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares solely for the purpose of determining their rights of contribution among themselves, each remaining severally liable to the injured person for the whole injury as at common law. [Acts 1941, No. 315, § 2, p. 788; 1949, No. 35, § 1, p. 99.]

34.1003. Individual liability of joint tortfeasor unaffected—Effect of judgment against one tortfeasor.—Nothing in this act [§§34.1001-34.1009] shall be construed to effect the several joint tortfeasors' common law liability to have judgment recovered and payment made from them individually by the injured person for the whole injury; but the recovery of a judgment by the injured person against one joint tortfeasor does not discharge the other joint tortfeasor. [Acts 1941, No. 315, § 3, p. 788.]

34.1004. Release of one tortfeasor—Effect on injured person's claim.—A release by the injured person of one joint tortfeasor, whether before or after judgment,

does not discharge the other tortfeasors unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid. [Acts 1941, No. 315, § 4, p. 788.]

34.1005. Effect of release on right of contribution.—A release by the injured person of one joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors. [Acts 1941, No. 315, § 5, p. 788.]

34.1006. Existing rights of indemnity unaffected.—This act [§§34.1001-34.1009] does not impair any right of indemnity under existing law. [Acts 1941, No. 315, § 6, p. 788.]

34.1007. Third party practice—Amendment of Complaint—Counterclaims—Cross-Complaints—Motion for contribution.—(1) Before answering, a defendant seeking contribution in a tort action may move ex parte or, after answering, on notice to the plaintiff, for leave as a third-party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable as a joint tortfeasor to him or to the plaintiff for all or part of the plaintiff's claim against him. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third-party defendant, shall make his defense to the complaint of the plaintiff and to the third-party complaint in the same manner as defenses are made by an original defendant to an original complaint. The third-party defendant may assert any defenses which the third-party plaintiff has to the

plaintiff's claim. The plaintiff shall amend his pleadings to assert against the third-party defendant any claim which the plaintiff might have asserted against the third-party defendant had he been joined originally as a defendant. The third-party defendant is bound by the adjudication of the third-party plaintiff's liability to the plaintiff as well as of his own liability to the plaintiff and to the third-party plaintiff. A third-party defendant may proceed under this section against any person not a party to the action who is or may be liable as a joint tortfeasor to him or to the third-party plaintiff for all or part of the claim made in the action against the third-party defendant.

(2) When a counterclaim is asserted against a plaintiff he may cause a third-party to be brought in under circumstances which under this section would entitle a defendant to do so.

(3) A pleader may either (a) state as a cross-claim against a co-party any claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant, or (b) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors one of whom has discharged the judgment by payment or has paid more than his pro rata share thereof. If relief can be obtained as provided in this subsection no independent action shall be maintained to enforce the claim for contribution.

(4) The court may render such judgments, one or more in number, as may be suitable under the provisions of this act [§§34.1001–34.1009].

(5) As among joint tortfeasors against whom a judgment has been entered in a single action, the provisions of section 2, subsection (4) [§34.1002] of this act apply only if the issue of proportionate fault is litigated between them by cross-complaint in that action.

(6) In the event plaintiff or defendant fail to serve third parties in such time and manner as may be required for third parties to be brought in and for service on the same to have matured on the day set for the original proceedings between the original parties, such failure shall not delay prosecution of proceedings between the original parties or impair the original defendant's right of contribution. [Acts 1941, No. 315, § 7, p. 788.]

34.1008. Uniformity of interpretation.—This act [§§ 34.1001-34.1009] shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States that enact it. [Acts 1941, No. 315, § 9, p. 788.]

34.1009. Short title.—This act [§§34.1001-34.1009] may be cited as the Uniform Contribution Among Tortfeasors Act. [Acts 1941, No. 315, § 10, p. 788.]